

Application No. 10/070,358
Attorney Docket: P-0258-US (KUR.011)

REMARKS

Claims 1-27 are all the claims presently pending in the application. By this amendment, claims 1 and 4-27 are amended. The amendments introduce no new matter.

It is noted that the claim amendments are made only to assure grammatical and idiomatic English and improved form under United States practice, and are not made to distinguish the invention over the prior art or narrow the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1 and 4 stand rejected under 35 U.S.C. §112, first paragraph. Claims 1-27 stand rejected under 35 U.S.C. §112, second paragraph. Claims 1-6 and 13-22 stand rejected under 35 U.S.C. §101.

Claims 1-27 stand rejected under 35 U.S.C. §103(a) over Borders, et al. (US Patent Application Publication No. 2001/0047285).

The rejections are respectfully traversed in the following discussion.

THE CLAIMED INVENTION

The claimed invention is directed to a device, system, methods, information recording medium, and computer program products for coordinating transactions.

As exemplarily recited in independent claim 1, the claimed invention is directed to a transaction coordinating device. The transaction coordinating device includes a transportation adjusting portion and a conditions-of-transaction delivering portion.

The device coordinates an insertion of a spot transaction into a predetermined

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schedule of a cargo transportation. The spot transaction is based on a temporary contract being made without respect to a fixed transaction. The spot transaction includes a transaction based on a one-time sales contract or based on an intermittent supply contract which is completed in a few times. The fixed transaction is based on a contract of predetermined term. The fixed transaction includes a long-term stable offtake contract of predetermined term in which transportation schedules can be confirmed at least about a year before.

The transportation adjusting portion arranges an insertion of a cargo transportation relating to the spot transaction into a predetermined schedule of a cargo transportation relating to said fixed transaction of predetermined term. The insertion is arranged by adjusting the predetermined schedule of the cargo transportation relating to the fixed transaction of predetermined term.

The conditions-of-transaction delivering portion delivers sales data of the spot transaction to participants in the spot transaction and to the transportation adjusting portion. The conditions-of-transaction delivering portion delivers transportation adjusting data from the transportation adjusting portion to the participants in the spot transaction.

The system, method, information recording medium, and program products reciting similar features are similarly claimed.

The preferred embodiments have been developed for use with transactions dealing with liquefied natural gas (LNG). However, the invention is applicable to other uses.

Conventionally, producers and carriers of LNG have concluded sales contracts based on contracts defining long-term stable acceptance arrangements. Such contracts may commit to the acceptance and amounts of LNG determined each year of the fixed term of the contract; such terms may be more than 20 years. An LNG market and charter market for

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LNG freighters for carrying out a spot transaction based on a temporary contract (that is, a transaction based on one-time sales contracts or based on an intermittent supply contract) has not been provided.

The claimed invention, on the other hand, facilitates a flexible market of spot transactions in accordance with variations in at least the production and scheduled transportation of LNG or other commodities.

THE 35 USC §101 REJECTION

Claims 1-6 and 13-22 stand rejected under 35 U.S.C. §101.

Although Applicant completely disagrees with this rejection, the claims are amended in accord with the Examiner's suggestion in an effort to expedite prosecution.

The Examiner alleges that claims 1-6 and 13-22, "*are written in an improper computer program product (i.e., article of manufacture) claim format, as discussed in the §112, 2nd paragraph rejection section above. Consequently, these claims are interpreted as computer programs per se, which are non-statutory under §101.*" Office Action, p. 6.

This is incorrect. Claims 1-6 are directed to a device. Claims 13-17 are directed to a recording medium on which is stored a program of instructions. Claims 18-22 are directed to a computer program product containing a computer program to be executed in a computer. None of the rejected claims are directed to a computer program *per se*.

The Examiner is respectfully requested to provide a citation to relevant case law in support of the Examiner's urged interpretation that the format of the claims is improper.

Applicant submits that claims 1-6 and 13-22 clearly and definitely claim statutory subject matter. Examination on the merits is respectfully requested.

THE 35 USC §112, FIRST PARAGRAPH REJECTION

Claims 1 and 4 stand rejected under 35 U.S.C. §112, first paragraph.

Although Applicant completely disagrees with this rejection, the claims are amended in accord with the Examiner's suggestion in an effort to expedite prosecution.

The Examiner alleges that, "*Claims 1 and 4 are deemed to be single means claims.*" Office Action, p. 3. This is incorrect. Claims 1 and 4 are clearly directed to a transaction coordinating device.

The Examiner cites *Fiers v. Revel* in support of the rejection, noting that, "*the CAFC affirmed a rejection under 35 USC 112 of a claim reciting a single element that did not literally use "means-plus-function" language.*" Office Action, p. 3. However, no such claim reciting only a single element is present in the recited claims.

Further, the cited case does not support the Examiner's urged interpretation that every single-limitation claim may be considered a means-plus-function claim, (although the particular claim in question in *Fiers* could.) The Examiner provides no support for the interpretation that the present claims are a single-element means-plus-function claim as in *Fiers*. Therefore, the present claims are not comparable to the cited case.

The Examiner further alleges that, "*The specification of the instant application does not provide sufficient disclosure to enable one to make and use all of the possible means that can be utilized to accomplish the recited functionality.*" Office Action, p. 3. This is incorrect. The specification provides such disclosure. The Examiner is specifically requested to provide a counterexample.

Applicant submits that claims 1 and 4 clearly and definitely claim the invention.

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Examination on the merits is respectfully requested.

THE 35 USC §112, SECOND PARAGRAPH REJECTION

Claims 1-27 stand rejected under 35 U.S.C. §112, second paragraph. The claims are amended, above, to overcome this rejection.

Although Applicant completely disagrees with this rejection, the claims are amended in accord with the Examiner's suggestion in an effort to expedite prosecution.

With regard to claims 1-6, the Examiner alleges, "*Apparatus claims are defined by their structural elements and corresponding functionality.*" Office Action, p. 4.

However, the cited claims are clearly directed to a device, not an apparatus.

The Examiner alleges, "*In an apparatus claim, functionality that is not directly tied to a structural element of the apparatus is outside the scope of the apparatus claim, and therefore, will not distinguish the claimed invention over the prior art.*" Office Action, p. 4.

Applicant respectfully requests the Examiner to provide a citation to case law in support of this assertion.

Applicant submits that claims 1-27 clearly and definitely claim the invention.

Examination on the merits is respectfully requested.

THE PRIOR ART REJECTION

The Borders Reference

Claims 1-27 stand rejected under 35 U.S.C. §103(a) over Borders. Applicant respectfully traverses this rejection.

The Examiner alleges that Borders discloses certain features of the claimed invention.

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However, Applicant submits that there are features of the claimed invention which are neither disclosed nor suggested by Borders.

The Examiner alleges that, "*It should be noted that the contractual terms surrounding a spot transaction are outside of the scope of the claimed invention since the details of creating temporary contract are not positively recited. Additionally, the fact that the spot transaction is based on a temporary contract does not affect any recited structure nor any manipulative steps of the claimed invention.*" Office Action, p. 9.

The Examiner is respectfully requested to cite case law in support of the Examiner's interpretation.

Applicant submits that the Examiner has failed to cite any reference which discloses or suggests each and every feature of the claimed invention.

The Examiner alleges that, "*for purposes of examination, a "spot transaction" will be interpreted as a transaction that is in the process of being scheduled while a "fixed transaction" will be interpreted as a transaction that has already been scheduled.*" Office Action, p. 9

Such an interpretation is inconsistent with the Specification. See: Specification, p. 2, line 16 – p. 3, line 10. MPEP 2173.05(a)(III) clearly states, "*Consistent with the well-established axiom in patent law that a patentee or applicant is free to be his or her own lexicographer, a patentee or applicant may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings if the written description clearly redefines the terms. See, e.g., Process Control Corp. v. HydReclaim Corp., 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999).*" Also, "*When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in*

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order to achieve a complete exploration of the applicant's invention and its relation to the prior art. In re Zletz, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989)." MPEP 2173.05(a)(I).

The Examiner is respectfully requested to examine the claims with all terms interpreted in a manner consistent with the Specification.

In view of the above, Applicant submits that Borders fails to disclose or suggest at least "A transaction coordinating device for coordinating an insertion of a spot transaction based on a temporary contract being made without respect to a fixed transaction based on a contract of predetermined term, said spot transaction comprising a transaction based on a one-time sales contract or based on an intermittent supply contract which is completed in a few times, said fixed transaction comprising a long-term stable offtake contract of predetermined term in which transportation schedules can be confirmed at least about a year before, said transaction coordinating device comprising: a transportation adjusting portion for arranging an insertion of a cargo transportation relating to said spot transaction into a predetermined schedule of a cargo transportation relating to said fixed transaction of predetermined term, said insertion being arranged by adjusting the predetermined schedule of said cargo transportation relating to said fixed transaction of predetermined term; and a conditions-of-transaction delivering portion delivering sales data of the spot transaction to participants in the spot transaction and to the transportation adjusting portion and delivering transportation adjusting data from the transportation adjusting portion to the participants in the spot transaction," as recited in independent claim 1.

Claims 2-7 and 23-27 depend from claim 1 and inherit all features and limitations thereof. Applicant submits that claims 2-7 and 23-27 are patentable for at least this reason, as

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well as for the additional subject matter they recite.

Independent claims 8, 9, 13, 14, 18, and 19 recite similar features. Applicant traverses the rejection of claims 8-22 on a substantially similar basis as discussed above.

Therefore, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-27 over Borders.

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CONCLUSION

In view of the foregoing, Applicant submits that claims 1-27, all the claims presently pending in the application, are patentably distinct over the prior art of record and are allowable, and that the application is in condition for allowance. Such action would be appreciated.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below to discuss any other changes deemed necessary for allowance in a telephonic or personal interview.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR §1.136. The Commissioner is authorized to charge any deficiency in fees, including extension of time fees, or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

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